



CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Adopt a Resolution Authorizing Sherry Beltz and Emily Wolfe, dba Jazzercise Fitness Center, 111 N. Stockton Street, Suite B, to Sublet a Portion of the Premises to Pyramids Inc., dba 720 Dance & Cheer, for the Period of April 1, 2001 to March 31, 2002

MEETING DATE: April 4, 2001

PREPARED BY: Parks and Recreation Director

RECOMMENDED ACTION: That the City Council approve above stated request.

BACKGROUND INFORMATION: Sherry Beltz and Emily Wolfe currently lease city property located at 111 N. Stockton Street, Suite B, for the purposes of conducting a Jazzercise Fitness Center. They are requesting to sublet a portion of the premises to Pyramids, Inc. for the purposes of conducting cheerleading and dance instruction for a period of one year, April 1, 2001 to March 31, 2002 with no option to renew. Attached is their request letter and proposed sublease agreement.

FUNDING: None.

A handwritten signature in cursive script that reads "Roger Baltz".

Roger Baltz
Parks and Recreation Director

RB:svb

cc: City Attorney

APPROVED: _____

A handwritten signature in cursive script that reads "H. Dixon Flynn".

H. Dixon Flynn -- City Manager

03/27/01

RECEIVED

MAR 22 2001

PARKS & RECREATION

JAZZERCISE
111 N. Stockton Street, Suite B
Lodi, CA 95240
(209) 333-0460

March 21, 2001

CITY OF LODI
221 W. Pine Street
Lodi, CA 95240

Gentlemen:

Sherry Beltz and Emily Wolfe request the City of Lodi's consent to sublet a portion of their premises to Pyramids, Inc., doing business as 720 Dance & Cheer, 2060 Commerce Avenue, Concord, California 94520. The proposed sublessee's use of the premises would be limited to Tuesday and Thursday evenings and Sunday afternoons and early evening -- times when sublessor will not be using the building. Frequently, subleases are done for physical space, however, this sublease is being done for hours of occupancy for virtually the entire space. The insurance requirements mandated by the lease for Jazzercise are being passed through to Pyramids during their occupancy. The plans are for Pyramids to come into Lodi for a year, assess the market, and, if all goes well, proceed to another site next spring. There is no option to extend this sublease beyond March 31, 2002.

Presently, Jazzercise runs programs in the building approximately 30 hours per week. The 10 hours that are being rented to Pyramids will not result in excessive use to the building but only what most would anticipate to be normal use. Approving this sublease will allow Jazzercise to continue as a viable business at this location and will provide an additional recreational opportunity for local youth.

Attached is a copy of the proposed sublease, which is contingent upon approval by the appropriate City of Lodi entity.

Very truly yours,

JAZZERCISE FITNESS CENTER

By Sherry Beltz
SHERRY BELTZ
By Emily Wolfe
EMILY WOLFE

COMMERCIAL SUBLEASE

Preamble

This sublease is entered into on _____, 2001, by and between SHERRY BELTZ and EMILY WOLFE, doing business as JAZZERCISE FITNESS CENTER, referred to in this lease as "Landlord," and PYRAMIDS, INC., doing business as 720 CHEER & DANCE, referred to in this lease as "Tenant."

Description of Property

1. Subject to the terms and conditions set forth in this sublease, Landlord hereby subleases to Tenant the use of that certain property located at 111 N. Stockton Street, Suite B, Lodi, California, between the hours of 7:00 p.m. to 9:00 p.m. on Tuesdays and Thursdays and 1:00 p.m. to 5:00 p.m. on Sundays. Neither Tenant nor their agents, employees, assigns, invitees, or guests shall have a right to occupy or use the registration area and child care areas on the premises.

Term

2. The term of this sublease shall be for no more than one year commencing April 1, 2001, and ending March 31, 2002. The actual beginning date of this sublease shall be conditioned upon consent being given by the City of Lodi, the owner of the property (Owner). Landlord represents that it has the right to occupy these premises pursuant to a lease with LENFORD RETZER, which lease has been assigned to the City of Lodi, through the end of this anticipated sublease term.

Basic Rent

3. Tenant agrees to pay to Landlord as basic rent for the use and occupancy of the subleased space during the times indicated, the sum of \$800.00 per month payable on the first day of each and every month commencing April 1, 2001, but prorated for said month if occupancy does not begin until after that time. Payment not made until after the fifth day of the month shall bear a late charge of five percent (5%) for each such payment.

Security Deposit

4. On execution of this sublease, Tenant shall deposit with Landlord \$800.00 as a security deposit for the performance by Tenant of the provisions of this sublease. If Tenant is in default, Landlord can use the security deposit, or any portion of it, to cure the default or to compensate Landlord for all damage sustained by Landlord resulting from Tenant's default. Tenant shall immediately on demand pay to Landlord a sum equal to the portion of the security deposit expended or applied by Landlord as provided in this paragraph so as to maintain the security deposit in the sum initially deposited with Landlord. If Tenant is not in default at the expiration or termination of this sublease, Landlord shall return the security deposit to Tenant. Landlord's obligations with respect to the security deposit are those of a debtor and not a trustee.

Landlord can maintain the security deposit separate and apart from Landlord's general funds or can commingle the security deposit with Landlord's general and other funds. Landlord shall not be required to pay Tenant interest on the security deposit.

Use of Premises

5. The subleased space shall be used for cheerleading and dance instruction and activities reasonably related thereto. There shall be no other use or uses without the prior expressed written consent of Landlord and Owner.

Prohibited Uses

6. Tenant shall not commit or permit the commission of any acts on the premises nor use or permit the use of the premises in any way that:

(a) Increases the existing rates for or causes cancellation of any fire, casualty, liability, or other insurance policy insuring the premises or its contents;

(b) Violates or conflicts with any law, statute, ordinance, or governmental rule or regulation, whether now in force or hereinafter enacted, governing the premises;

(c) Obstructs or interferes with the rights of other tenants or occupants of the premises or injures or annoys them; or

(d) Constitutes the commission of waste on the premises or the commission or maintenance of a nuisance as defined by the laws of California.

Acceptance of Premises

7. Tenant's taking possession of the premises on commencement of the term shall constitute Tenant's acknowledgment that the premises are in good condition.

Personal Property Taxes

8. Tenant shall pay before delinquency all taxes, assessments, license fees, and other charges ("taxes") that are levied and assessed against Tenant's personal property installed or located in or on the premises, and that become payable during the term. On demand by Landlord, Tenant shall furnish Landlord with satisfactory evidence of these payments.

Alterations

9. No alteration, addition, or improvement to the premises shall be made by Tenant without the written consent of Landlord. If Landlord gives such written consent to any alteration, addition, or improvement to the subleased premises, Landlord and Tenant shall agree in writing

at that time to the date when that undertaking shall be completed. Tenant shall obtain all necessary governmental permits required for any alteration, addition, or improvement approved by Landlord and shall comply with all applicable governmental law, regulations, ordinances, and codes. Any alteration, addition, or improvement made by Tenant after consent has been given, and any fixtures installed as part of the construction, shall at Landlord's option become the property of Landlord on the expiration or other earlier termination of this sublease; provided, however, that Landlord shall have the right to require Tenant to remove the fixtures at Tenant's cost on termination of this sublease. If Tenant is required by Landlord to remove the fixtures on termination of this sublease, Tenant shall repair and restore any damages to the subleased premises caused by such removal.

Mechanics' Liens

10. If Tenant causes any alterations, additions, or improvements to be made to the premises, Tenant agrees to keep the premises free of liens for both labor and materials. If a lien is placed on the premises in connection with any construction, repair, or replacement work that Tenant may or must cause to be performed under this sublease, which results in a final judgment, Landlord may pay the amount of that judgment. Tenant shall reimburse Landlord for the full amount paid within 10 days after that amount is paid by Landlord; otherwise Tenant shall be in default under this sublease.

Maintenance and Repairs

11. Tenant shall during the term of this sublease maintain the premises in a good, clean, operating and safe condition, and shall on expiration or earlier termination of this sublease surrender the premises to Landlord in as good condition and repair as existed on the date of this sublease, reasonable wear and tear excepted. Tenant, at Tenant's own expense, shall repair all deteriorations or injuries to the premises occasioned by Tenant's lack of ordinary care.

Inspection by Landlord

12. Tenant shall permit Landlord or Landlord's agents, representatives, or employees to enter the premises at all reasonable times for the purpose of inspecting the premises to determine whether Tenant is complying with the terms of this sublease and for the purpose of doing other lawful acts that may be necessary to protect Landlord's interest in the premises under this sublease.

Utilities

13. Tenant shall be responsible to install and maintain any telephone or fax services it desires. In addition, Tenant shall pay twenty percent (20%) of the utility services, including sewage, water, electrical, and gas, billed to the premises. Upon receipt of the monthly statements, Landlord shall provide Tenant with copies of those statements and a calculation indicating the amount due from Tenant. This amount shall be due immediately but payable with

the rent due in the next succeeding month, in no event more than thirty (30) days after the presentation of the invoice.

Exculpation of Landlord

14. Landlord shall not be liable to Tenant for any damage to Tenant or Tenant's property from any cause. Tenant waives all claims against Landlord for damage to persons or property arising for any reason.

Indemnity

15. Tenant shall hold Landlord harmless from all damages arising out of any damage to any person or property occurring in, on, or about the premises, except that Landlord shall be liable to Tenant for damage resulting from the acts or omissions of Landlord or its authorized representatives. A party's obligation under this paragraph to indemnify and hold the other party harmless shall be limited to the sum that exceeds the amount of insurance proceeds, if any, received by the party being indemnified.

Security Responsibility

16. It is Tenant's responsibility to secure the premises upon the conclusion of any day's activities. The hours of operation for Tenant are later than the normal hours of operation for Landlord. Landlord will provide a list of all equipment, furniture, and furnishings to Tenant that belong to Landlord. Any damage to Landlord's personal property during the tenancy of Tenant will be the responsibility of Tenant.

Insurance

16. In furtherance of the previous paragraph, Tenant will, throughout the term of the sublease, and at Tenant's own expense, procure and maintain so-called public liability insurance, insuring Landlord and said Tenant against damages because of or on account of bodily injuries to or death of any persons, occasioned by the maintenance and operation of said demised premises, in the minimum amount of One Million and no/100 dollars (\$1,000,000.00) for any one accident, and against damage to property of any person or persons, wherever located, including the loss of use thereof, in the minimum amount of Five Hundred Thousand Dollars and no/100 (\$500,000.00). The policies hereunder required shall be given by insurance companies satisfactory to Landlord. Should Tenant fail to provide for, maintain or pay for any kind of insurance hereinabove provided for, or the required amount thereof, Landlord may, at Landlord's option, procure such insurance, and together with interest thereon at the rate of fifteen percent (15%) per annum, the premium amount shall be paid to Landlord on the first day of the calendar month next ensuing the payment thereof.

Insurance for Personal Property

17. Tenant agrees at all times during the term of this sublease to keep, at Tenant's sole expense, all of Tenant's personal property, including trade fixtures and equipment of Tenant that may be on or in the premises from time to time, insured against loss or damage by fire and by any peril included within fire and extended coverage insurance for an amount that will insure the ability of Tenant to fully replace the personal property, trade fixtures, and equipment. Tenant will maintain at all times a workers' compensation policy sufficient to insure their employees.

Waiver of Subrogation

18. The parties release each other, and their respective authorized representatives, from any claims for damage to any person or to the premises and to the fixtures, personal property, tenant's improvements, and alterations of either Landlord or Tenant in or on the premises that are caused by or result from risks insured against under any insurance policies carried by the parties and in force at the time of any such damage.

Acts Constituting Breach

19. The following shall constitute a default under and a breach of this sublease by Tenant:

(a) The nonpayment of rent when due, when the nonpayment continues for three days after written notice to pay rent or surrender possession of the premises has been given by Landlord to Tenant;

(b) A failure to perform any provision, covenant, or condition of this sublease other than one for the payment of rent, when that failure is not cured within three days after written notice of the specific failure is given by Landlord to Tenant;

(c) The breach of this sublease and abandonment of the premises before expiration of the term of this sublease;

(d) A receiver is appointed to take possession of all or substantially all of Tenant's property located on the premises or of Tenant's interest in this sublease, when possession is not restored to Tenant within 30 days;

(e) Tenant makes a general assignment for the benefit of creditors;

(f) The execution, attachment, or other judicial seizure of substantially all of Tenant's assets located on the premises or of Tenant's interest in this Sublease, when the seizure is not discharged within 15 days; or

(g) The filing by or against Tenant of a petition to have Tenant adjudged a bankrupt or of a petition for reorganization or arrangement under the federal bankruptcy law, unless, in the case of a petition filed against Tenant, it is dismissed within 60 days,

Default Remedies

20. All covenants and agreements contained in this sublease are declared to be conditions to this sublease and to the term hereby demised to Tenant. Should Tenant default in the performance of any covenant, condition, or agreement contained in this sublease, and the default not be cured within three (3) days after written notice of the default is served on Tenant by Landlord, then Landlord shall be entitled to avail himself of any remedy available and the election of such remedy shall not be construed as a waiver of any other remedy or breach or right to resort to any process otherwise available to him.

Assignment and Subletting

21. Tenant shall have no right to sublet any portion of the premises without first obtaining the express written consent of Landlord and Owner.

Signs and Advertising

22. Any sign that Tenant has the right to place, construct, and maintain shall comply with all laws, and Tenant shall obtain any approval required by such laws. Landlord makes no representation with respect to Tenant's ability to obtain such approval. Any advertising by Tenant shall include the following provision: "We are not affiliated with Jazzercise Fitness Center of Lodi."

Notices

23. Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this sublease or by law to be served on or given to either party to this sublease by the other party shall be in writing, and shall be deemed duly served and given when personally delivered to the party to whom it is directed or any managing employee of that party or, in lieu of personal service, when deposited in the United States mail, first-class postage prepaid, addressed to Landlord at 111 N. Stockton Street, Suite B, Lodi, CA 95240, or to Tenant at 2060 Commerce Avenue, Concord, CA 94520. Either party may change its address for purposes of this paragraph by giving written notice of the change to the other party in the manner provided in this paragraph.

Waiver of Breach

24. The waiver by Landlord of any breach by Tenant of any of the provisions of this sublease shall not constitute a continuing waiver or a waiver of any subsequent default or breach by Tenant either of the same or a different provision of this sublease.

Termination Notice

25. No act of Landlord, including but not limited to Landlord's entry on the premises or efforts to relet the premises, or the giving by Landlord to Tenant of a notice of default, shall be construed as an election to terminate this sublease unless a written notice of the Landlord's election to terminate this sublease is given to Tenant.

Time

26. Time is of the essence of each provision of this sublease.

Consent of Parties

27. Whenever consent or approval of either party is required, that party shall not unreasonably withhold such consent or approval.

California Law

28. This sublease shall be construed and interpreted in accordance with the laws of the State of California.

Severability

29. The unenforceability, invalidity, or illegality of any provision shall not render the other provisions unenforceable, invalid, or illegal.

Attorneys' Fees

30. If any litigation is commenced between the parties to this sublease concerning the premises, this sublease, or the rights and duties of either in relation to the premises or the sublease, the party prevailing in that litigation shall be entitled, in addition to any other relief granted, to a reasonable sum as and for its attorneys' fees in the litigation, which shall be determined by the court in that litigation or in a separate action brought for that purpose.

Binding on Heirs and Successors

31. This sublease shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the parties, but nothing in this paragraph shall be construed as a consent by Landlord to any assignment of this sublease or any interest therein by Tenant.

Sole and Only Agreement

32. This instrument constitutes the sole and only agreement between Landlord and Tenant respecting the premises or the leasing of the premises to Tenant, and correctly sets forth the obligations of Landlord and Tenant to each other as of its date. Any agreements or representations respecting the premises or their leasing by Landlord to Tenant not expressly set forth in this instrument are null and void.

EXECUTED on _____, 2001, at Lodi, San Joaquin County, California

LANDLORD

JAZZERCISE FITNESS CENTER

By _____
SHERRY BELTZ

By _____
EMILY WOLFE

TENANT

PYRAMIDS, INC., doing business as 720 CHEER & DANCE

By _____
MORTON BERGUE

By _____
DANNY KAHN

The City of Lodi (Owner) hereby consents to allow SHERRY BELTZ and EMILY WOLFE, dba JAZZERCISE FITNESS CENTER, to sublease a portion of the premises located at 111 N. Stockton Street to PYRAMIDS, INC., dba 720 CHEER & DANCE.

Dated: _____

H. DIXON FLYNN, City Manager

Approved as to form:

Attest: _____
SUSAN J. BLACKSTON
City Clerk

RANDALL A. HAYS, City Attorney

Commercial Sublease
(Jazzercise/Pyramids)

RESOLUTION NO. 2001-86

A RESOLUTION OF THE LODI CITY COUNCIL AUTHORIZING
SHERRY BELTZ AND EMILY WOLFE, DBA JAZZERCISE
FITNESS CENTER, 111 N. STOCKTON STREET, SUITE B, TO
SUBLEASE A PORTION OF THE PREMISES TO PYRAMIDS
INC., DBA 720 DANCE & CHEER

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WHEREAS, the City currently leases space to Sherry Beltz and Emily Wolfe, dba Jazzercise Fitness Center, 111 N. Stockton Street, Suite B; and

WHEREAS, they desire to sublease a portion of their leased space to Pyramids Inc., dba 720 Dance & Cheer, for the purpose of conducting cheerleading and dance instruction for a period of one year, April 1, 2001 to March 31, 2002 with no option to renew.

NOW, THEREFORE, BE IT RESOLVED, that the Lodi City Council does hereby authorize Sherry Beltz and Emily Wolfe, dba Jazzercise Fitness Center, 111 N. Stockton Street, Suite B, to sublease a portion of their leased space to Pyramids Inc., dba 720 Dance & Cheer, for the period of one year, April 1, 2001 to March 31, 2002 with no option to renew.

Dated: April 4, 2001

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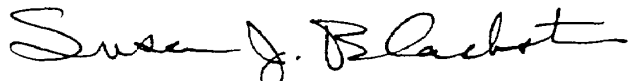
I hereby certify that Resolution No. 2001-86 was passed and adopted by the City Council of the City of Lodi in a regular meeting held April 4, 2001, by the following vote:

AYES: COUNCIL MEMBERS – Land and Mayor Nakanishi

NOES: COUNCIL MEMBERS – Hitchcock

ABSENT: COUNCIL MEMBERS – Howard and Pennino

ABSTAIN: COUNCIL MEMBERS – None



SUSAN J. BLACKSTON
City Clerk